

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

LEROY PERRY, JR.,)	
)	
Plaintiff,)	
)	
vs.)	
)	
CERES MARINE TERMINALS, INC.)	
)	
Intervenor,)	Civil Action No.
vs.)	
)	
NYK LINE (NORTH AMERICA) INC.,)	
MIYAZAKI SANGYO KAIUN CO., LTD., and)	
HOKOKU MARINE CO., LTD.,)	
)	
Defendants.)	

**ANSWER OF DEFENDANTS MIYAZAKI SANGYO
KAIUN CO., LTD. AND HOKOKU MARINE CO., LTD. TO
PLAINTIFF’S AMENDED COMPLAINT FOR DAMAGES**

NOW COME Defendants MIYAZAKI SANGYO KAIUN CO., LTD. (“Defendant Miyazaki”) and HOKOKU MARINE CO., LTD., (“Defendant Hokoku”) (collectively “Defendants Miyazaki and Hokoku”) and without waiving their personal jurisdiction defense hereby file this their Answer to the Amended Complaint for Damages filed by the Plaintiff in the above-styled action, in support of which they respond as follows:

FIRST DEFENSE

The Plaintiff’s Amended Complaint fails to state a claim against Defendants Miyazaki and Hokoku upon which relief can be granted, and should therefore be dismissed.

SECOND DEFENSE

The Plaintiff's Amended Complaints fails due to insufficiency of process and insufficiency of service of process, and should therefore be dismissed.

THIRD DEFENSE

The damages alleged by Plaintiff in his Amended Complaint were not caused by the negligence of Defendants Miyazaki or Hokoku or any of their agents, representatives, or subcontractors on their behalf, but were instead solely the result of acts or omissions on the part of either the Plaintiff himself or third parties over whom Defendants Miyazaki and Hokoku have no supervision, control, or legal responsibility.

FOURTH DEFENSE

Plaintiff's claims against the Defendants Miyazaki and Hokoku fail to the extent his damages were caused by a fellow servant.

FIFTH DEFENSE

The vessel on which Plaintiff alleges to have been injured was on long-term time charter at the time of his incident, and Defendants Miyazaki and Hokoku did not purposefully avail themselves of this jurisdiction, and thus this Court lacks personal jurisdiction over these Defendants in this matter.

SIXTH DEFENSE

Because this Court lacks personal jurisdiction, venue is improper in this Court.

SEVENTH DEFENSE

Defendants Miyazaki and Hokoku respond to the enumerated paragraphs of the Plaintiff's Amended Complaint as follows:

I. Parties, Jurisdiction and Venue

1. Defendants Miyazaki and Hokoku are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Amended Complaint.

2. Defendants Miyazaki and Hokoku are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Amended Complaint.

3. Defendants Miyazaki and Hokoku deny service of process was carried out in compliance with the requisite treaties and other legal obligations but admit the remainder of the allegations contained in Paragraph 3 of the Amended Complaint.

4. Defendants Miyazaki and Hokoku deny service of process was carried out in compliance with the requisite treaties and other legal obligations but admit the remainder of the allegations contained in Paragraph 4 of the Amended Complaint.

5.1 Defendants Miyazaki and Hokoku deny the allegations contained in the **first** Paragraph 5 of the Amended Complaint.

5.2 Defendants Miyazaki and Hokoku deny the allegations contained in the **second** Paragraph 5 of the Amended Complaint.

6.1 Defendants Miyazaki and Hokoku are without sufficient information to form a belief as to the truth of the allegations set forth in the **first** paragraph 6 of the Amended Complaint.

6.2 Defendants Miyazaki and Hokoku respond to the **second** paragraph 6 of the Amended Complaint by admitting that the cause of action the Plaintiff purports to set forth in the Amended Complaint is based upon injuries that Plaintiff alleges to have occurred in Chatham

County, Georgia, but Defendants Miyazaki and Hokoku deny Plaintiff is entitled to any relief against Defendants Miyazaki and Hokoku for such injuries, and answer further that the Motor Vessel NYK NEBULA upon which Plaintiff alleges to have been injured on or about May 23, 2016, was not located in the Port of Savannah on such date.

7. As to the non-numbered paragraph of the Amended Complaint stating “Plaintiff brings this action under the Savings to Suitors clause of 28 USC § 1333, under Georgia law, and all laws supplementary and amendatory thereto,” Defendants Miyazaki and Hokoku admit that the Plaintiff purports to bring his action under the laws alleged therein, but deny he is entitled to any relief against these defendants under such laws.

8. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 8 of the Amended Complaint.

II. Factual Allegations

9. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 9 of the Amended Complaint. Answering further, the M/V NYK NEBULA was not located in the Port of Savannah or Container Berth 4/5 on May 23, 2016.

10. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 10 of the Amended Complaint.

11. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 11 of the Amended Complaint, as stated, and respond further that the owner of the M/V NYK NEBULA is MTO Maritime S.A. Defendants Miyazaki and Hokoku respond further by denying Plaintiff was working on board said vessel on the date set forth in the Amended Complaint.

12. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 12 of the Amended Complaint.

13. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 13 of the Amended Complaint.

14. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 14 of the Amended Complaint. Answering further, Defendants show that the M/V NYK NEBULA was not located anywhere near the Port of Savannah, the navigable waters of the United States, or the State of Georgia at the time set forth in the Amended Complaint.

15. Defendants Miyazaki and Hokoku deny that the turnbuckle which Plaintiff alleges to have been involved in this incident on board the M/V NYK NEBULA was either unlubricated or rusty. Defendants Miyazaki and Hokoku are without sufficient information to form a belief as to the truth of the remainder of the allegations contained in Paragraph 15 of the Amended Complaint.

III. Causes of Action

Negligence

16. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 16 of the Amended Complaint.

17. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 17 of the Amended Complaint.

18. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 18 of the Amended Complaint.

19. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 19 of the Amended Complaint, including all subparts.

20. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 20 of the Amended Complaint.

IV. Injuries and Damages

21. Defendants Miyazaki and Hokoku admit the Plaintiff purports to bring an action against them to recover the categories of damage listed in Paragraph 21 of the Amended Complaint, but steadfastly deny Plaintiff is entitled to any such recovery against Miyazaki and Hokoku.

22. Defendants Miyazaki and Hokoku deny the allegations contained in Paragraph 22 of the Amended Complaint.

23. To the extent the Plaintiff's Amended Complaint contains any allegations not addressed hereinabove, those allegations are hereby denied, including the entirety of the Plaintiff's prayer for relief.

WHEREFORE, having fully responded to the Plaintiff's Amended Complaint for Damages, Defendants Miyazaki and Hokoku request that it be dismissed, with all costs cast upon the Plaintiff, and for such other and further relief as this Court deems just and equitable.

This 21st day of November, 2017.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

/s/ Colin A. McRae

Colin A. McRae

Georgia Bar No. 499045

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Georgia Bar No. 399364

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing **ANSWER OF DEFENDANTS MIYAZAKI SANGYO KAIUN CO., LTD. AND HOKOKU MARINE CO., LTD. TO PLAINTIFF'S AMENDED COMPLAINT FOR DAMAGES**, upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, properly addressed and by using the CM/ECF system which will send a notice of electronic filing to the following:

Brent J. Savage
Savage, Turner & Pinckney
Post Office Box 10600
Savannah, Georgia 31412

James D. Kreyenbuhl
Brennan, Harris & Rominger, LLP
2 E. Bryan Street
Savannah, Georgia 31401

Jason C. Pedigo, Esquire
Ellis, Painter, Ratterree & Adams LLP
2 East Bryan Street, 10th Fl.
Savannah, Georgia 31401

This 21st day of November, 2017.

HUNTER, MACLEAN, EXLEY & DUNN, P.C.

/s/ Colin A. McRae

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Georgia Bar No. 499045

Kate Lawson Smith

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